

EDITH JACQUOT

IBLA 76-611

Decided October 12, 1976

Appeal from rejection of request for amendment of Alaska Native Allotment Certificate (A-061035).

Set aside and remanded.

1. Alaska: Native Allotments -- Applications and Entries:
Amendments

Where an Alaskan Native alleges that the land described in her Native Allotment Certificate is not the land she settled on and posted, her application for an amendment of the certificate will not be rejected solely because the certificate description is consistent with her application if she offers a reasonable explanation for the mistake and has actually occupied the land she seeks to have included in her certificate.

APPEARANCES: Max F. Gruenberg, Jr., Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Edith Jacquot has appealed from a decision of the Alaska State Office, BLM, dated April 9, 1976, denying her request to have her Native Allotment Certificate reformed to describe land other than that described in the certificate as issued.

Mrs. Jacquot filed her native allotment application on February 21, 1961. As originally filed the application described:

That parcel of land, which when surveyed, will be described as the SW 1/4 of Section 31, excepting therefrom Lot 1 (surveyed), Township 29 South, Range 59 East, Copper River Meridian, Alaska.

At the request of the Juneau Land Office, the Juneau Area Office of the Bureau of Indian Affairs, added a metes and bounds description, as required by the pertinent regulation, 43 CFR 2562.1(b).

The metes and bounds description reads:

Beginning at a point on the meander line on the left bank of an easterly branch of the Chilkat River, directly east of the southeast corner of the Lot 1, Section 31, T. 29 S., R. 58 E., C.R.M.; thence northerly and westerly with said meander line to an intersection with the east boundary of Sec. 36, T. 29 S., R. 57 E., C.R.M.; thence north with said section line to the east quarter (1/4) corner of the said Sec. 36; thence east 1/2 mile; thence south 1/2 mile; thence west to the point of beginning.

Mrs. Jacquot filed her evidence of occupancy in June 1966. Following a favorable field examination, the land described in her application was surveyed in 1967. The plat of survey was accepted on March 24, 1970. It depicted the land covered by Mrs. Jacquot's application as Lot 2, Section 31, T. 29 S., R. 58 E., Copper River Meridian. On May 10, 1973, Mrs. Jacquot was issued allotment certificate No. 50-73-0193 describing said Lot 2.

On December 15, 1973, she wrote to the State Office that a man from the BIA had visited her and showed her a map of her allotment, and that the land she was allotted was not the land she had staked.

After some further correspondence, Mrs. Jacquot filed her petition for reformation of her allotment in which she again asserted that the land described in the certificate is not the land she staked but is mainly a steep hillside. Her husband in a supporting affidavit states that the hillside is adjacent to the land he staked for his wife, that the land he staked is level land, that he staked the land in December 1961 and thereafter built a cabin on it. He says he marked the corners of the land by nailing jar lids to trees and screwing the glass jars to the lids. The fourth marker, he asserts was nailed to a cottonwood tree which was adjacent to the Haines Highway and which has since been cut down, but that there is a Coast and Geodetic Survey's surveyor's mark designated "Ray 1970" about 2 feet from Marker No. 4. The reformed description, as amended, begins with this marker and runs 1/2 mile north, east, south and west from that point - encompassing 160 acres in Sec. 36, T. 29 S., R. 57 E., and secs. 30 and 31, T. 29 S., R. 58 E., C.R.M., Alaska.

Mrs. Jacquot also points out that her original description was suggested to her by a friend by referring to a map but who did not look at the land and that the survey crew did not go over the land with her.

In rejecting Mrs. Jacquot's petition the State Office pointed out that the metes and bounds description tied the land specifically to the meander line on the left bank of an easterly bank of the Chilkat River and the beginning point to the southeast corner of lot 1, section 31, T. 29 S., R. 58 E. The plat of survey is in accordance with this description and lot 2 includes the cabin site used and occupied by appellant. The decision indicated that the request for reformation would be denied because the description in her application was so specific as to a natural object, the river, and another object, the surveyed corner.

[1] While we agree that lot 2, as surveyed, is the same land as that described in the application and that Mrs. Jacquot was supplied a copy of the plat of survey showing the land that was to be conveyed to her, we are still left with the conclusion that, if her and her husband's statements are true, this is not the land she staked and has occupied.

Whether some fault may be attributed to her or whether she should have realized the mistake earlier should not be dispositive of the issue. We also note that the reformed description varies substantially from the metes and bounds description as to location and shape, but the issue is what land appellant staked and occupied and whether it may still be conveyed to her.

Accordingly, we conclude that her contentions should be carefully considered, the land examined to determine whether there is physical support for them, and other pertinent evidence be reviewed. If a discrepancy is established, the certificate should be amended insofar as it is legally possible.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is set aside and the case remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

